STATE OF NEW YORK
SURROGATE'S COURT : COUNTY OF ULSTER

Petition for Judicial Settlement of Account by
Susan Ryan, as Executrix of the Estate of

STEPHEN SCHAFFER (aka STEPHEN EUGENE SCHAFFER),

Deceased.

DECISION/ORDER
File No. 2013-160/D and E
HON. SARA W. McGINTY
Surrogate

Appearances:
Christine H. Guido, Esq. (Rusk, Wadlin, Heppner & Martuscello, LLP), attorneys for Susan Ryan, petitioner/5% residuary beneficiary
John J. Zefutie, Esq. (Colella/Zefutie, LLC), attorneys for Hannah Lila Seligson Schaffer, 40% residuary beneficiary
Sean Denvir, Esq., attorneys for Joseph K. Langerfeld, 16% residuary beneficiary
Michelle Daley, Esq., as guardian ad litem for Aasyam (aka Krishnaya) Goswami "Guruji", an infant over the age of 14 years, 5% residuary beneficiary

McGINTY, S., J.

This is a proceeding on objections to the final accounting of Susan Ryan as executor of the Estate of Stephen Schaffer ("executor").

The last will and testament (the "Will") of Stephen Schaffer ("decedent") was admitted to probate in May 2016. The Will made no specific bequests and divides the residuary estate among 8 beneficiaries, only one of whom is a distributee: Hannah Lila Seligson Schaffer, the decedent's daughter.

A petition for judicial settlement of interim account (the "Interim Accounting") was filed on January 6, 2022. The executor identified a crucial issue in the administration of the estate: the principal asset of decedent's residuary estate was his 1/24th (4.1667%) interest in a family

limited liability company ("LLC"), but decedent's power to transfer it was severely constrained by the terms of the LLC operating agreement.

The LLC operating agreement bars the transfer of interests in the LLC to persons who are not direct lineal descendants of the three founding Schaffer brothers unless the consent of two-thirds of the existing membership interests is obtained. Here, the decedent's Will left 40 percent of his interest in the LLC to non-family member Joseph Langerfeld and other non-family members (hereinafter collectively referred to as "non-family beneficiaries"). The transfers to non-family beneficiaries could therefore be accomplished only if the approval of two-thirds of the aggregate existing membership interests was obtained.

From time of her appointment, the executor was acutely aware of the challenges in effecting the bequest of decedent's membership interests to the non-family beneficiaries. As a preliminary step, the executor obtained appraisals of the LLC and the estate's 4.1667% interest therein. For this purpose, she engaged Marcum Accountant & Advisors LLP ("Marcum"), a firm with extensive experience with the LLC and its assets. The sole asset of the LLC at that time was an 11-story building at 18 West 18th Street in New York City (the "Loft Building"). WeWork, a co-working office space provider ("WeWork"), occupied all but one floor of the Loft Building and accounted for 90 percent of the rent roll. The ground floor retail space was leased to an "urgent care" provider.

In its December 2020 appraisal, Marcum valued the decedent's fractional share in the LLC at $1,680,000, reflecting a 50 percent minority interest discount arising from a lack of control and lack of marketability.

Because the estate lacked the liquidity to buy out the interests of the non-family beneficiaries outright, the executor worked with two other member/beneficiaries to fashion an offer to buy the interests of non-family beneficiaries for $1,680,000. Their offer, attached to the Interim Accounting, provided for the purchase of about 56 percent of the LLC interests bequeathed to the non-family beneficiaries. To finance the purchase of the remaining 44 percent, the offerors agreed to accept membership interests in lieu of cash otherwise distributable to them as residuary beneficiaries, thereby freeing up additional estate funds to buy out the balance of the LLC interests bequeathed to the non-family beneficiaries.

None of the non-family beneficiaries addressed this first buy-out arrangement in their responses to the Interim Accounting. Langerfeld objected to Marcum's valuation of the decedent's membership interest and to the 50 percent discount. Believing, as many did at the time, that the disastrous effects of the pandemic on the commercial real estate market would be short-lived, he questioned whether the appraisal was overly influenced by what was hoped to be a transitory market dislocation.

The guardian ad litem for Aasyam (aka Krishnaya) Goswami objected to the employment of Marcum, based on the executor's "connections with key people" in that firm, which she viewed as a conflict of interest. She also rejected the estate's position that the LLC's operating agreement limited the transfer of the estate's membership interest to the non-family beneficiaries. As a result, she believed, the appraisals were unnecessary and the discount for lack of marketability was completely inappropriate.

Accordingly, in March 2022, the Court directed Langerfeld to obtain a re-valuation of the Loft Building using an appraiser of his choice. There then followed several months of efforts at

informal discovery and feints at settlement. No further settlement offer was received from Langerfeld, nor did he engage an appraiser to perform a valuation.

Ultimately it was the estate which procured an updated appraisal. In its September 14, 2022 appraisal, Marcum valued the estate's interest in the LLC at $2,219,000. The value of the estate's interest reflected a 10 percent reduction for lack of control and a 30 percent reduction for lack of marketability. This was a reduction from the 50 percent discount incorporated into Marcum's earlier appraisal, which Langerfeld had found objectionable and the guardian ad litem deemed irrelevant.

In the meantime, as remote work became the norm in Manhattan, the prospects for WeWork were increasingly poor. On January 31, 2023, counsel for the executor advised the Court that WeWork had approached the LLC managers seeking renegotiation and reduction of their rental obligations. She further advised that beneficiaries who are Schaffer family members who had previously expressed an interest in taking their distributions in the form of membership interests were re-considering their position as the prospect of a greatly reduced rent roll loomed. The offer was eventually withdrawn.

An affidavit bringing the Interim Accounting to date was filed on February 3, 2023. In her supporting affidavit, the executor recounted her efforts to obtain the necessary consents to the admission of the non-family beneficiaries as successors to the decedent's membership interests. She reported that about 42 percent of LLC membership interests were firmly opposed to the admission of non-family members under any circumstances. The executor concluded by reflecting that her seven (7) years of efforts to obtain the necessary consents to the admission of the non-family beneficiaries had been in vain.

As the negotiations for a settlement were at an impasse in the Spring of 2023, the Court issued its scheduling order requiring that objections to the Interim Accounting be filed by May 24, 2023.

In May 2023, three (3) additional LLC members who were not beneficiaries under the Will made a new offer to purchase 34 percent of the decedent's interest in the LLC based on a reduced valuation of $1,500,000 for the 4.1667% membership interest. The reduction was occasioned by the December 2022 restructuring of WeWork, which included a drastic renegotiation of the terms of its lease with the LLC. The space rented was to be reduced from 10 floors to 5. Rent was reduced by $1,200,000 for the year beginning March 2023 and by $2,700,000 for the year beginning March 2024. The rent was to revert to its former levels at the expiration of the second year of reduced rent payments.

As no objections were filed with regard to the Interim Accounting, a final decree settling the Interim Accounting was issued which provided for a partial distribution of $500,000 among all residuary beneficiaries.

On August 8, 2023, WeWork announced in a quarterly filing that it had "substantial doubt" it would stay in business. On November 6, 2023, WeWork filed for bankruptcy, suspending its lease obligations. The Court takes judicial notice of the fact that the COVID pandemic, which lead to remote work for most Manhattan office-workers, had rendered WeWork's business model outdated. The decimation of the rent roll for the Loft Building[1],

[1] The Loft Building's "highest and best use" according to Marcum is as an office building with ground-floor retail. Conversion of the building to residential use --- an increasingly popular option for older office buildings --- was unworkable because the Loft Building is block-through edifice and only its front and back facades are windowed.

together with the looming maturity July 2026 date of an interest-only $49,000,000 mortgage loan sent the value of the Loft Building into a downward spiral.

A May 28, 2024 update from the executor's attorneys reported that C.A. White, Inc., the LLC manager, had again approached the members of the LLC about purchasing 40 percent of the estate's interest in the LLC: none of the members were interested in purchasing any additional shares at any price. At this point, WeWork had emerged from bankruptcy, staying on as a tenant of five floors at the agreed-upon "significantly reduced rent."

At a conference on May 30, 2024, the executor reported negative cash flow for the Loft Building; as a result, the mortgagee was asking that the managing members of the LLC provide a personal guaranty for payment of the $50,000,000 mortgage debt. Counsel for Hannah Lila Seligson Schaffer (40% residuary beneficiary) and Aasyam (aka Krishnaya) Goswami "Guruji", (5% residuary beneficiary) urged that the estate be closed before further devaluation of its assets .

In the last conference before the filing of the Final Accounting on October 16, 2024, the executor reported that the LLC managers were attempted a work-out of the $49,000,000 mortgage. As an initial step, the mortgagee required that the LLC pledge all of its cash as further security for the mortgage loan. The Loft Building was then being operated at an annual loss of about $1,000,000 - $1,500,000 and given the need to address the outstanding mortgage, no distributions from the LLC were anticipated for at least 2 years, with significant reductions in distributions if and when they resumed.

Langerfeld countered that "things are looking up in Manhattan" real estate and encouraged the executor to wait an additional 9 months before throwing in the towel. He

reportedly was comfortable with "rolling the dice." At that point, the Court reminded his that the dice were not his to roll and that the executor had to consider the interests of all beneficiaries in determining how best to administer the estate[2].

As negotiations to settle the estate had come to a standstill, the Court ordered that a petition for judicial settlement of petitioner's final account be prepared (the "Final Accounting"). The Final Accounting was filed with the Court on October 16, 2024.

Objections to the Final Accounting were filed on behalf of Langerfeld.

A party petitioning for judicial settlement of their account has the burden of proving that they have "fully accounted for the entire estate" (*Matter of Cook*, 177 AD3d 1214, 1216 [3d Dept 2019]). A fiduciary has "fully accounted" when they have provided all the information necessary to "make the story of the administration intelligible to those who read it" (Harris, New York Estates 18:27 [6th ed 2021])." If the accounting is contested, objectant is tasked with making an initial showing that the accounting is "inaccurate or incomplete" (*Matter of Campione*, 58 AD3d 1032, 1034 [3d Dept 2009], *citations omitted*). If the objectant makes such a showing, the accounting fiduciary is charged with demonstrating, by a fair preponderance of the evidence, that the account is accurate and complete (*Schnare v. Sutton*, 181 AD2d 859 [3d Dept 1993], *lv denied* 82 NY2d 653 [1993]).

The Court finds that the accounting is complete and fully accounts for the administration of the estate to date. The petitioner has therefore made a prima facie case for

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[2] Langerfeld holds a 16 percent interest in the residuary estate. The balance of the residuary legatees (with an aggregate interest in the residuary estate of 84 percent) have not objected to the accounting. While not dispositive, it is certainly relevant to this proceeding that an overwhelming majority of residuary beneficiaries support the issuance of a decree settling the account of the petitioner (see, SCPA 1001(1)[f]).

issuance of a final decree settling the estate and the burden is shifted to the objectant to identify how the accounting is inaccurate or incomplete.

. Langerfeld makes the following objection to the Final Accounting:

1. The accounting assigns a zero value for the estate's interest in the LLC without supporting expert opinion or analysis. As a result, the petitioner has failed to marshall an estate asset.

2. Because the petitioner is both a beneficiary and a member of the LLC, her valuation of the non-family member's interest in the LLC at zero results in a benefit to the beneficiaries who are family members and amounts to self-dealing her part. Further discovery is required to evaluate the petitioner's "divided loyalty."

3. Petitioner delayed in provided basic financial information regarding the LLC. Further discovery is required to assess the reasons for the delay.

4. Article 13 of the LLC operating agreement permits the assignment of a member's interest in the "allocations and distributions" of the LLC to any person, whether a Schaffer family member or not, without the consent of existing members of the LLC.

The Court rejects the demands for discovery set forth in objections 2 and 3. The time for such an endeavor is long past, as discovery in the Interim Accounting proceeding was to be completed by May 24, 2023. Moreover, the limits on financial disclosure imposed by the LLC's managers was not subject to executor's discretion or control. In addition, Langerfeld had been ordered to obtain an alternate appraisal, which he could have undertaken at any point in these proceedings. This he chose not to do. His contention that the decedent's interest in the LLC is undervalued is thus unsupported by facts. Objectant having offered no alternate valuation or other facts to controvert the entries in the accounting, he is barred from raising an objection on this point at this very late date (*Estate of Curtis*, 16 AD3d 725, 727 [3d Dept 2005]).

Objection 4 relies on a provision permitting the assignment of distributions. The Court does not agree that this provision is controlling, as it must be read and interpreted in the context of the entire operating agreement. For example, Article 13 (Transferability and Withdrawal) provides an over-riding principal governing all dispositions of membership interests:

> Except as otherwise provided herein, no member . . . may assign, pledge, hypothecate, transfer or otherwise dispose of all or any part of his interest in the [LLC], including without limitation the capital, profits or distributions of the [LLC]

Article 17 (Admission of New Members) provides that:

> The Members may admit . . . transferees of any interests of existing Members . . . into the [LLC] by the affirmative vote or consent of Members holding two-thirds of the [existing membership interests].

The objectant relies on a subsequent provision of the operating agreement which permits a member to assign their interest in "allocations and distributions." But this is not what decedent attempted to do: he bequeathed the entirety of his membership interest in and to the LLC, not just his right to receive its "capital, profits or distributions." Even if he had bequeathed an interest in income only, a reading of the operating agreement as a whole makes it clear that such an assignment is expressly barred by Article 13's prohibition against assigning "any part of [a member's] interest . . . including the capital, profits or distributions of the [LLC] except in accordance with the provisions of [the operating] agreement." In short, any assignment of all or a portion of a membership interest to a person who is not a member of the Schaffer family is subject to the consent of two-thirds of the LLC membership interests. The operating agreement further provides that an attempted assignment of a member's interest in the LLC in violation of its provisions "shall be null and void for all purposes."

The Court finds that the bequest of decedent's interest in the LLC as contemplated by his Will is null and void under the terms of the operating agreement (*see, Macklowe v. 42nd St. Dev. Corp.*, 170 AD2d 388 (1st Dep't 1991): assignments "made in contravention of a prohibition clause in a contract are void if the contract contains clear, definite and appropriate language declaring the invalidity of such assignments"). As in *Spinex Lab. V. Empire Blue Cross & Blue Shield,* 212 AD2d 906 [3d Dept 1995], the language of the operating agreement rendering null and void any attempted assignment in violation of its terms "could hardly be clearer."

The Court and the parties have been made aware of the executor's dogged attempts to obtain the consent of the other members of the LLC to the assignment of the estate's interest in the LLC. Indeed, although not required on her part, the executor was able to fashion an offer to purchase the estate's share from 3 Schaffer family members, including herself. When that offer was withdrawn, the executor found three other family members willing to purchase decedent's interests outright. In connection with that offer, petitioner also agreed to take her commissions --- which she now waives --- in kind. Far from being self-dealing, she used her position as a respected family member of the LLC to attempt to obtain the requisite consents or, failing that, to finance a buy-out of the bequests at issue. The cost to her in personal relationships was painfully high. These efforts on behalf of the non-family beneficiaries were far beyond her fiduciary duties to administer the estate in accordance with the terms of the Will. Far from self-dealing, the Court finds in petitioner's conduct a selfless dedication to the interests of the estate and its beneficiaries.

It bears repeating that the propriety of the petitioner's valuation of the estate's interest in the LLC at zero is really secondary to the unwillingness of a sufficient proportion of membership interests to give their consent to the decedent's bequest. It matters not what the fair market value of the decedent's interest in the LLC may be if the bequest cannot be carried out under the terms of the governing instrument. The Court finds that decedent's bequest of his interest in the LLC to the non-family beneficiaries was null and void under the express terms of the operating agreement (*Spinex Lab. V. Empire Blue Cross & Blue Shield*, 212 AD2d 906 [3d Dept 1995]; *Pappas v. B& G Holding Co.*, 2024 NY Misc LEXIS 15686 [smBx Cty Sup Ct 2024]).

The Court is nevertheless duty-bound to find a way to effectuate the bequest in a manner that reflects the decedent's testamentary plan (*see, eg, Matter of Dawe*, 179 AD3d 1182 [3d Dept 2020]: the "court's foremost objective is ascertainment of the decedent's intent, and, concomitantly, effectuating the will's purpose" (*citations omitted*). The Court finds that this is best accomplished by re-allocating the interests in the LLC in the void bequests to residuary beneficiaries qualified to receive them: Hannah Lila Seligson Schaffer, Susan Ryan and Mae Ryan, who shall receive such interests in proportion to the bequests made for them in the Will (*Matter of Kalikow*, 2010 NY Misc LEXIS 6505 [Surr Ct Nassau Cty]).

As the objectant has failed to establish that the Final Accounting is inaccurate or incomplete, the petition for judicial settlement of the Final Accounting is granted. The executor shall file an affidavit bringing the Final Accounting to date in accordance with the terms of this decision/order within 30 days of the date hereof.

Matters raised by the parties and not addressed herein have been examined and either found to be without merit or are disposed of herein.

IT IS, THEREFORE,

ORDERED, DECIDED and DECREED, the objections of Joseph K. Langerfeld are dismissed; and it is further

ORDERED, DECIDED and DECREED that petitioner shall file an affidavit bringing the Final Accounting to date in accordance with this terms of this decision/order within 30 days of the date hereof, together with a form of final decree judicially settling the account of the petitioner.

This constitutes the order of the Court. All papers, including this Order, are hereby entered and filed with the Clerk of the Surrogate's Court. Counsel is not relieved from the applicable provisions of CPLR Section 2220 relating to service and notice of entry.

DATED: April 25, 2025

ENTER:

HON. SARA W. McGINTY

Documents reviewed:

1. Judicial Settlement of Intermediate Account, with Schedules filed January 6, 2022.
2. Guardian ad litem Report and Recommendation filed March 2, 2022.
3. Fair Market Value of decedent's membership interest by Marcum Accountants/Advisors filed December 1, 2022.
4. Affidavit Bringing Account to Date, with petitioner's supporting affidavit filed February 3, 2023.
5. Supplemental Report and Recommendation by guardian ad litem dated June 29, 2023.
6. Judicial Settlement of Final Account, with Schedules filed December 3, 2024.
7. Guardian ad litem Report and Recommendation filed February 4, 2025.
8. Objection by Langerfeld, with Exhibits, filed February 19, 2025.
9. Reply to objections by petitioner filed March 4, 2025.
10. Reply to objections by Hannah Schaffer Seligson filed March 4, 2025.
11. Periodic correspondence received from attorneys for the parties July 2022 – September 2024.